

RADIO TV REPORTS, INC.

4701 WILLARD AVENUE, CHEVY CHASE, MARYLAND 20815 656-4068

FOR PUBLIC AFFAIRS STAFF

PROGRAM Braden & Buchanan

STATION WRC Radio

DATE March 16, 1983 5:10 P.M. CITY Washington, D.C.

SUBJECT The Polygraph

PAT BUCHANAN: Let's go back to the main subject here, subject number one. That's lie-detector tests to stop leaks.

Richard K. Willard, Deputy Assistant Attorney General, Civil Division. How you doing?

RICHARD K. WILLARD: Fine, thank you.

BUCHANAN: What's the necessity to ask a couple hundred thousand federal workers to agree to submit to a polygraph if material is leaked? Isn't that a little bit of a broad brush?

WILLARD: Well, we think the polygraph is a useful tool in some investigations. The actual frequency with which it's used will depend on what the investigating officials determine is necessary. I doubt if it will be given more than a few dozen times a year in these kinds of investigations.

TOM BRADEN: Mr. Willard, I understand that you were chairman of the working group that put this thing together.

WILLARD: That's right.

BRADEN: I don't want to be unfriendly to you, but it seems to me you've come up with a mess. I mean you've got a rule in here that says that everybody has to sign a secrecy agreement that handles classified information. And I just wonder what would have happened to Dean Acheson or Henry Kissinger or any one of a number of other people who want to write a book about their experiences in high office. What would happen to yourself or your own boss if you, four or five years from now, wanted to write a book on how the Justice Department -- how good it is and

OFFICES IN: WASHINGTON D.C. • NEW YORK • LOS ANGELES • CHICAGO • DETROIT • AND OTHER PRINCIPAL CITIES

Material supplied by Radio TV Reports, Inc. may be used for file and reference purposes only. It may not be reproduced, sold or publicly demonstrated or exhibited.

how effective it is and what ought to be changed about it?

I mean you're cutting off from the American people, by this secrecy agreement thing, let alone, the lie detector --leave that for separate. The secrecy agreement cuts off the American people from the experience of their senior officials, now retired.

WILLARD: Well, I guess I don't agree that that would happen. The secrecy agreement, with a pre-publication review provision in it, was approved by the Supreme Court in the Snepp case in 1980.

BRADEN: I know it was.

WILLARD: And it has been regularly applied in our intelligence agencies for some years.

BRADEN: But look, sir, that Snepp agreement preceded the departure from the State Department of Henry Kissinger. And it's just my guess that, based upon the same thing, Henry Kissinger could not have written his memoirs.

BUCHANAN: Well, tell us, Mr. Richard K. Willard, is this secrecy agreement new?

WILLARD: The secrecy agreement is not a new device. Its application, though, would be extended by this directive. One reason for it is the belief...

BRADEN: It's been used in the CIA. That's all.

WILLARD: That's true. The pre-publication review provision has been carried out primarily at CIA, to date.

One reason is that the rule should be the same for the high-ranking as well as for the low-ranking; and that, if anything, the danger of an unauthorized disclosure of classified information is greater when you have a former Secretary of State writing his memoirs than when you have a desk officer from the CIA writing his memoirs.

BUCHANAN: ...Mr. Willard, this secrecy thing is fairly interesting. Suppose -- I mean when I worked in the White House -- well, let's take former President Nixon. He wrote his memoirs and he talks about messages he got from Golda Meir, and Kissinger talks about all those messengers. And would they have to clear their memoirs with the Department of Justice?

WILLARD: Well, the clearance would occur with regard to the employing agency, not the Department of Justice, as such.

BRADEN: It means, literally -- now, let me just put it plainly. It means that Henry Kissinger or Dean G. Acheson or, let's say, Lyndon B. Johnson, for that matter, would have had to go to some bureaucrat in the office where he previously worked, some underling, and say, "Is it okay if I say this?" And then they go through their files and they come back and they say, "Well, no. That's still classified."

I just think this is nonsense.

WILLARD: Well, the procedure is one that the Supreme Court has approved and held as proper. It, obviously, has to be applied with common sense. People do not have to submit manuscripts for review if they don't talk about subject matters involving classified information.

If I, for example, wanted to write a book about trial tactics or litigation of agriculture cases, I wouldn't have to submit it for clearance. But if I wanted to write about a case in which I had access to classified information, then I would, so as to make sure that I didn't accidentally disclose classified information.

BUCHANAN: Okay. I don't see -- maybe I disagree with Tom. I don't see the problem of the secrecy aspect of it too much.

But let me ask, Mr. Willard, I mean what is the necessity -- heretofore, suppose a Justice Department individual had access to confidential material in a case, that the material breaks in the press and it presents a real problem for you folks at the Department of Justice. Don't you already have the authority to strap him to a polygraph machine?

WILLARD: You're right. The authority with regard to the polygraph, in this directive, is the same as is now the policy of the Department of Justice. And we can and do use the polygraph if it's indicated in an internal investigation.

Other agencies, though, have different and more restrictive policies. And this directive requires that they modify those, at least to come up to what the Justice Department policy is.

Now, of course, CIA and our other intelligence agencies use the polygraph much more extensively. But this directive does not require that...

BRADEN: Who's going to supervise the polygraph? Now, one of the things about the polygraph that bothers government workers -- I've had it many times myself because I was in the

CIA. And I agree with the purport of your suggestion that it is probably pretty accurate. Although I've read cases where it has failed because people got too nervous.

But what about the girl who is going to go up -- is accused or suspected, and she goes and lies down on that -- or sits down in the chair and gets all strapped in, and you have some guy asking her about her sexual habits?

BUCHANAN: Well, I don't think that's a security...

WILLARD: It's not provided for in the directive. The directive specifically provides that the polygraph can be limited to the circumstances of unauthorized disclosure. So that it doesn't have to go into lifestyle type questions that some employees find offensive.

BRADEN: Are you aware that it often does?

BUCHANAN: That's just from going to CIA and stuff.

WILLARD: What I was trying to do is draw the distinction between the way CIA uses it, which is as a clearance device, in which it may go into lifestyle; and what this directive is concerned with, which is investigating particular events -- that is, an unlawful disclosure of classified information.

BUCHANAN: ...As I get it, Mr. Willard, what you've proposed with regard to the polygraph is nothing more than this: If an individual who gets a job in the Department of Defense or the Justice Department and he's handling classified material, secret material or top secret material or very confidential material -- say, with regard to a trial -- as soon as he's given access to that, he has got to agree that in the event that it's leaked and an investigation occurs, he, like everyone else who's handled the material, has to agree to submit to a polygraph test if the department so determines because they feel the breach was so important that they've got to run down its leak and prevent leaks. Is that all that's being required?

WILLARD: That's basically it. And in addition, that the polygraph examination, under those circumstances, would be limited to the leak only. It wouldn't talk about lifestyle.

And finally, if the employee refused to take the polygraph, what could happen would be such matters as adverse inferences. That is, that would be considered in the overall picture of the investigation. But it wouldn't be used...

BUCHANAN: What do you mean by adverse inferences?

WILLARD: Well, if someone is suspected of disclosing classified information unlawfully and they refuse to take a polygraph, that might be one more fact that could go into deciding the case.

BRADEN: It would sure go on his job sheet.

Now, look, Mr. Willard, what about -- let me give you a hypothetical case which doesn't seem to me too off -- too much off the mark. Suppose you have Mr. Buchanan working over there in the White House for Richard Nixon, and the Israeli Prime Minister comes over. It would have been, who, Rabin?

BUCHANAN: Rabin.

BRADEN: Okay. So Mr. Buchanan hears a fuss going on in the inner office, and he looks in and he sees Rabin and Nixon just beating each other up verbally. And he goes out and he tells some reporter friend of his, "Boy, the old man really got sore at the Israeli Prime Minister today." Now, that's classified information, isn't it? Why don't we put Buchanan in front of a lie-detector test?

BUCHANAN: Could you do that, Mr. Willard?

WILLARD: Well, I'm not sure that what you've described to me would be classified information, as such.

BRADEN: It's foreign policy. I suppose it's...

BUCHANAN: Yeah, but it's not stamped secret. It's not a secret document. It's just a story. It's not a secret meeting. It's not like the fall-back of the SALT position, or something like that.

WILLARD: There obviously has to be some judgment used in deciding what is or is not classified.

BUCHANAN: Let me ask you this. Suppose Ronald Reagan said, "Look, I cannot believe that Lou Cannon story that all my aides are leaking this material. And I'm going to strap the whole bunch of them to a polygraph." Could he do that?

WILLARD: He certainly could. And he could have done it before his directive. Presidential aides serve at the pleasure of the President. If he wanted to make them take a polygraph, he can do it. This directive doesn't change that at all.

BRADEN: It'd be very interesting to try it out over there these days.

BUCHANAN: Suppose President Nixon says, "We want to know who leaked that," and I said, "Well, I'm not taking the polygraph. I'm going to stand on my constitutional rights."

WILLARD: Then you wouldn't have to [unintelligible] employment there any longer.

BUCHANAN: Okay, Richard K. Willard, Department of Justice, Assistant Attorney General.

I don't find any problem with this.

BRADEN: Of course you wouldn't. Strap everybody to the lie-detector machine. And heaven sakes, don't let anybody publish anything without putting it before a Grade-14 to see if it's okay with him.

BUCHANAN: You want to comment on that, Mr. Willard, before you go?

WILLARD: Well, it's basically, though, we think that fairness is what should govern this. And for too long there's been two sets of rules, one for the intelligence professionals, who've been very restricted, and another set for the people who receive the information, who haven't been. And this is an effort to make the system work more fairly, and to deal equally with the higher-ups, as well as lower down.

BRADEN: Has it got a grandfather clause?

BUCHANAN: No, I don't believe so, but I don't know for sure.